



**PERSONNEL APPEALS BOARD**  
25 Capitol Street  
Concord, New Hampshire 03301  
Telephone (603) 271-3261

**Appeal of Theresa Caplette**

**Docket #2018-T-011**

**Department of Corrections**

August 28, 2019

The New Hampshire Personnel Appeals Board met in public session on Wednesday, July 17, 2019, under the authority of RSA 21-I:58 and Chapters Per-A 100-200 of the NH Code of Administrative Rules, to hear the appeal of Theresa Caplette, the Appellant. The following commissioners sat for this hearing: Commissioner Christopher Nicolopoulos, Esq., Commissioner David Goldstein and Commissioner Marilee Nihan. Ms. Caplette, who was represented at the hearing by Attorney John Vanacore, appealed her dismissal as a Case Technician II from the Department of Corrections. Attorney Lynmarie C. Cusack appeared on behalf of the Department of Corrections.

The record of the hearing in this matter consists of pleadings filed by the parties prior to the date of the hearing, notices and orders issued by the Board, the audio recording of the hearing on the merits of the appeal and documents admitted into evidence.

**THE FOLLOWING PERSONS GAVE SWORN TESTIMONY:**

Jason Smith, Acting Director of the Field Services Division

Kathryn Hubley, Human Resources Coordinator, Department of Corrections

Theresa Caplette, Appellant

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## **ISSUES OF LAW:**

Per 1002.08 (b) (12)

PPD 2.16 (V) (3) & (V) (36)

## **BACKGROUND:**

The Department of Corrections hired the Appellant on August 6, 2012 as a Case Technician. In this role, her responsibilities included administratively processing assigned cases in order to collect fees, fines, or restitution ordered by the court. The Appellant typically worked Monday through Friday from 8:00am-4:00pm.

The Appellant's position required her to travel, which provided her with a certain amount of autonomy. The Appellant was trusted to work 37.5 hours every week. The Appellant's supervisor had concerns that she did not work an entire day on November 27, 2017 and November 28, 2017. A pre-disciplinary meeting was held and the Appellant offered little defense to the allegations. After the meeting, it was determined that the Appellant did not work 7.5 hours on either day even though she recorded she did and was paid as if she did.

After carefully considering the parties' testimony, evidence, and arguments the Board made the following findings of fact and rulings of law:

## **FINDINGS OF FACT:**

1. The Department of Corrections hired the Appellant on August 6, 2012 as a Case Technician. In this role, her responsibilities included administratively processing assigned cases in order to collect fees, fines or restitution ordered by the court. The Case Technician position requires travel and the Appellant was directed to submit a weekly schedule to her supervisor in addition to marking on a calendar when she would be working out of the office. (State's Exhibit B)

2. The typical work hours for a Case Technician II are Monday through Friday from 8:00a.m-4:00pm, unless one has pre-approval to deviate from this schedule. A Case Technician is entitled to a 30-minute lunch break every day, which equaled to 7.5 work hours each day (Testimony of Jason Smith).
3. In the event the Appellant needed to deviate from her normal work schedule, there would be another entry on her timecard that would need approval. For example, if the Appellant requested annual leave time, it should be noted on her timecard that she was approved to use annual leave (Testimony of Mr. Smith and State's Exhibit C).
4. Former Director of Field Services, Michael McAlister, had concerns that the Appellant did not work the hours that she entered on her time card for November 27, 2017 and November 28, 2017. As a result, Mr. McAlister issued the Appellant a Pre-Disciplinary letter on December 20, 2017. The letter states, in relevant part, "The purpose of the meeting is to discuss your timecard entries to pay period 11/24/2017 through 12/07/2017 as I received information alleging you did not work all hours you reported and submitted for payment. Due to the severity of this allegation of falsification of agency records, I am considering serious disciplinary action up to and including dismissal from employment." The letter goes on to state, "The above noted meeting is to provide you the opportunity to discuss these allegations and present information you believe should be considered by me when making my determination" (Testimony of Ms. Hubley).
5. The pre-disciplinary meeting was held on December 27, 2017. The Appellant reported that she attended court hearings at the Laconia District Court and the Franklin District Court on November 27, 2017. The Appellant reported that she drove from her residence in Pembroke to the Laconia District Court and stated that she was there for a long period. The Appellant could not recall if she just sat in her motor vehicle or went inside the courthouse. Prior to November 27, 2017, Mr. Smith received a telephone call from the Laconia Police Chief to inform Mr. Smith that he was unhappy he had to handle one of the Appellant's cases because she was not present. After the pre-disciplinary meeting,

Mr. McAlister spoke with an employee from the Laconia District Court and was advised that the Appellant never appeared at court that day. The Appellant had a case scheduled that day but the court had to continue it due to the Appellant's absence (Testimony of Mr. Smith and State's Exhibit B).

6. The Appellant told Mr. McAlister that after she was done at the Laconia District Court she drove to the Franklin District Court. The Appellant reported that she arrived between 12:15pm-12:30pm. She stated that she was in the courtroom for 1 hour or 1.5 hours before being told that her client would not be present and the hearing had to be continued. After the pre-disciplinary meeting, Mr. McAlister learned from a representative from the Franklin District Court that the Appellant arrived at approximately 12:45pm and was informed shortly thereafter that her presence was not necessary. The Appellant left the court at approximately 1:00pm and did not return to the Central Office. The Appellant worked approximately 1 hour and recorded that she worked 7.5 hours on her timecard (State's Exhibit B).
7. On November 28, 2017, the Appellant reported that she thought she had a hearing at the Dover District Office/Strafford County Superior Court at noon. The Appellant stated that she left her home between 9:00am-9:30am and arrived at approximately 11:00am. A representative from the court reported, however, that the Appellant arrived at approximately 11:50am. The Appellant's commute to the courthouse from her home is 42 miles. The Appellant did not explain why it took, at best, nearly 2.5 hours to reach the courthouse. Upon the Appellant's arrival, she was told that it was not her hearing so she left and returned to the Central Office at approximately 2:30pm. The Appellant worked approximately 3.5 hours but recorded that she worked 7.5 hours on her timecard (Testimony of Ms. Hubley and State's Exhibit B).
8. The Appellant's appeal reflects she left the Dover District Office/Strafford County Superior Court at approximately 12:30pm and arrived at the Central Office at approximately 2:30pm. The Appellant knew it did not take 2 hours of driving time from the Dover District Office/Strafford County Superior Court but chose not to correct it in

her written appeal. The Appellant signed her appeal under a statement which states, "I hereby attest that to the best of my knowledge and belief all of the representations made in this appeal are truthful" (Testimony of Appellant).

9. Prior to the beginning of the pre-disciplinary meeting, Human Resources representative, Kathryn Hubley, made it clear to the Appellant that she was welcome to have a union representative present but the Appellant declined and wished to proceed. It was also made clear in the letter that the topic of conversation would be the Appellant's timecard from November 24, 2017 through December 7, 2017 and that it was being questioned whether she actually worked the time she reported on her timecard (Testimony of Ms. Hubley and State's Exhibit A).
10. During the pre-disciplinary hearing, the Appellant provided little to no information or evidence to refute the claims that she did not work 7.5 hours on November 27, 2017 or November 28, 2017 (Testimony of Ms. Hubley and State's Exhibit B).

#### **RULINGS OF LAW:**

- A. Per 1002.08 (b) (12) An appointing authority may dismiss an employee without prior warning for offenses such as, but not necessarily limited to, the following: Falsification of any agency records received, maintained, or utilized by the agency.
- B. PPD 2.16 V (3) Dereliction of Duty: Employees are derelict in their duties when they willfully or negligently fail to perform them, or when they perform them in a culpably insufficient manner...
- C. PPD 2.16 (V) (36) Failure to Follow the Policies and Procedures: Failure to follow any and all policies and procedures of the Department of Corrections may result in disciplinary action against the employee and is a violation of this policy.

D. Per-A 207.12 (b) In disciplinary appeals, including termination, disciplinary demotion, suspension without pay, withholding of an employee's annual increment or issuance of a written warning, the board shall determine if the appellant proves by a preponderance of the evidence that (1) the disciplinary action was unlawful, (2) the appointing authority violated the rules of the division of personnel by imposing the disciplinary action under appeal, (3) the disciplinary action was unwarranted by the alleged conduct or failure to meet the work standard in light of the facts in evidence, and (4) the disciplinary action was unjust in light of the facts in evidence.

**DISCUSSION and ORDER:**

The Appellant asserted that she drove to the Laconia District Court on November 27, 2017, and recalled being there for some time, however, she does not recall if she exited her vehicle and went inside the courtroom. The Board questions why the Appellant would drive to a courthouse but not enter. After the pre-disciplinary hearing, former Director of Field Services, Michael McAlister, telephoned the Laconia District Court and learned that the Appellant's case that morning had to be continued due to the Appellant's absence. The Appellant then reported that she then drove to the Franklin District Court and was there for approximately 1.5 hours. However, after the pre-disciplinary meeting, former Director McAlister telephoned the Franklin District Court and learned that the Appellant was only present for approximately 15 minutes, as her case had been continued.

On November 28, 2017, the Appellant believed she had a hearing at the Strafford County Superior Court. Upon arrival, she was informed that she did not have a hearing. The Appellant reported that she left her home for the Strafford County Superior Court between 9:00am-9:30am and arrived 11:00am. A representative from the court, however, reported that she did not arrive until almost noon. The Appellant's commute to the courthouse is only 42 miles and it is unknown why it would have taken the Appellant either 2.5 or 3.0 hours to travel this distance.

The Appellant's written appeal reflects that she left the Strafford County Courthouse at 12:30pm and arrived at the central office in Concord at 2:30pm. On cross-examination, the Appellant acknowledged that she knew it did not take this long to travel to the central office and was asked why she did not correct her appeal prior to submission and she stated, "I felt uncomfortable because they seemed like they [union representative] were being so helpful" and she knew it had to be filed that day so she was grateful for any help she could get. She was asked once again why she did not correct the error and she answered, "I guess in the bigger picture, I felt it was more important to get it filed and to get the help they were giving me and there was very little time left." The Appellant went on to testify that she saw the error but felt if she corrected it she would be "pushing it" because the union was under no obligation to help her.

The Board does not find it credible that the Appellant drove to the Laconia District Courthouse but could not recall if she exited her vehicle upon arrival. This uncertainty begs the question of why she would drive there in the first place. One would think that the Appellant would recall such a detail. There was no testimony from the Appellant that she received a phone call from court staff informing her that her case had been cancelled. Further, it was later discovered that the hearing at the Laconia Courthouse was continued because the Appellant was not present.


The Board does not find it credible that the Appellant left her home to drive to the Strafford County Courthouse between 9:00am-9:30am. A representative from the court informed Director McAlister that she did not arrive until 11:50am. Even if the Appellant left at 9:30am, this would mean that it took her nearly 2.5 hours to travel 42 miles.

Lastly, the Appellant testified on cross-examination that she knowingly submitted an appeal to the Board that was not true and accurate. The Appellant signed her appeal under a statement, which reads, "I hereby attest that to the best of my knowledge and belief all of the representations made in this appeal are truthful." The Board found this to be incredulous, especially considering the Appellant's position within the Department of Corrections.

The Appellant's job requires her to be in court frequently and the Department of Corrections demands that their employees' integrity be beyond reproach. The Board agrees with the State that the Appellant was not honest and forthright about the events of the days in question and, further, the Appellant demonstrated this behavior when she knowingly filed an appeal that was not completely true and accurate.

For the foregoing reasons, the Board unanimously voted to **DENY** the appeal and to uphold the Department's decision to dismiss the Appellant.

THE PERSONNEL APPEALS BOARD

  
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Commissioner Christopher Nicolopoulos, Esq.  
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Commissioner Marilee Nihan

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